JORDAN *v.* UNIVERSALIST GENERAL CONVENTION TRUSTEES.

June 13, 1907.

[57 S. E. 652.]

Charities—Devise—Validity.—A devise of a remainder to the trustees of the Universalist General Convention, to be by them sold and the money applied to mission work in the United States, was not invalid for indefiniteness.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 9, Charities, § 49.]

Appeal from Circuit Court of City of Norfolk.

Bill by Thaddeus Jordan against the Universalist General Convention trustees. Decree for defendants, and plaintiff appeals. Affirmed.

S. M. Brandt, for appellant.
T. S. Purdie, for appellees.

KEITH, P. Thaddeus Jordan, the appellant, filed his bill in the circuit court of the city of Norfolk, in which he states that he is the heir at law and next of kin of Joseph Jordan, deceased, who by his last will and testament gave to his wife, Mary Elizabeth Jordan, and his son, Richard Silvester Jordan, "my dwelling house and lot in Huntersville (in the county of Norfolk), on North street, called 'Lot No. 20,' in the following manner, that is to say: Should my said son survive my said wife, to him for his life; should my said wife survive my said son, to her for her lifetime; while they both live to own the same equally; at the death of both the said house and lot to go to the trustees of the Universalist General Convention, and by them to be sold and the money applied to mission work in the United States of America."

It appears that both Mary Elizabeth Jordan and Richard Silvester Jordan are dead, dying intestate and without issue; that the plaintiff is the son of Joseph Jordan, the testator, by a former marriage; that he has no brothers or sisters, nor the descendants of any, living; and that he is the sole heir at law and distributee. The bill avers that the Universalist General Convention is an unincorporated religious society, composed of the various branches of the Universalist Church throughout the United States; that plaintiff has used due diligence to ascertain who the representatives or trustees of the Universalist General Convention are. And he further alleges that the Universalist General Convention cannot take title to real estate in the state of Virginia; that the remainder after the life tenancy of Mary Elizabeth Jordan to the Universalist General Convention, or the representatives or trustees

thereof, is null and void; that the devise of the property intended to be disposed of by the first clause of the will is so indefinite that its meaning and effect cannot be determined without the aid of a court of equity; and therefore he prays that the trustees of the said Universalist General Convention, and all other unknown persons who are or may be interested in the real estate attempted to be devised by the first clause of the will, may be made parties defendant to the bill by the general description of parties unknown.

From the answer and exhibits filed by the trustees of the Universalist General Convention, it appears that the Universalist General Convention is a corporation duly incroporated and organized under the laws of the state of New York, as appears by an act of the Legislature of that state passed March 9, 1866, and this is agreed to be a fact. It is also agreed that the persons who in the answer style themselves as the trustees of the said corporation are its duly elected and qualified trustees.

Upon the pleadings and proof the circuit court was of opinion "that the said corporation is not prohibited by the laws of the state of Virginia, or by public policy, from taking and selling the property so devised to it and using the proceeds of its sale for the purpose specified in said devise, * * * and that the said devise in the first clause of the will of the said Joseph Jordan is a valid disposition of the property named therein to the aforesaid corporation, the Universalist General Convention, subject to the life estate of the aforesaid wife and son of the testator;" and from that decree Thaddeus Jordan obtained an appeal from one of the judges of this court.

The contention of appellant is that the disposition of real estate must be made in accordance with the laws of the place in which it is situated, and that a devise of land to a corporation for the uses declared in the clause of the will under consideration is contrary to the public policy of this state, and therefore null and void.

In Galego's Ex'rs *v.* Attorney General, 3 Leigh, 451, 24 Am. Dec. 650, the court held that, the English statute of chartiable uses (St. 43 Eliz.) having been repealed in Virginia, "the courts of chancery have no jurisdiction to decree charities, where the objects are indefinite and uncertain." It was accordingly held that a bequest of $2,000 to be distributed among needy, poor, and respectable widows, and the devise of a lot to trustees in fee, upon trust to permit all and every person belonging to the Roman Catholic Church, as members thereof, or professing that religion, and residing in Richmond at the time of his death, to build a church on the lot, for the use of themselves and of all others of

that religion who may hereafter reside in Richmond, were void for uncertainty as to the beneficiaries.

In Seaburn *v.* Seaburn, 15 Grat. 423, it was held that the devises and bequests contained in the will then under consideration would undoubtedly be void for uncertainty, according to the principle of Gallego's Ex'rs *v.* Attorney General; but in that case counsel contended that the devises and bequests were rendered valid under section 8, c. 77, p. 362, of the Code of 1859, then in force, which provided that "every conveyance, devise or dedication shall be valid which since the 1st day of January, 1777, has been made, and every conveyance shall be valid which hereafter shall be made, of land for the use or benefit of any religious congregation as a place for public worship or as a burial place or a residence for a minister; and the land shall be held for such use or benefit and for such purpose and not otherwise." It was held, however, that the case was controlled by the decisions applicable to indefinite charities, and was not validated by the statute, because the word "conveyance," as therein used, did not embrace a devise.

In Roy *v.* Rowzie, 25 Grat. 599, it was held that where the person or object or subject referred to in a bequest is uncertain, or does not answer precisely the description given them in the will, or where there are two or more objects or subjects which answer equally the description, resort must be had to parol evidence and the surrounding circumstances to show what the testator intended by the expressions which he used, and if such intention is so ascertained with sufficient certainty the bequest is valid. In that case a bequest to "the Baptist Theological Seminary in South Carolina" was held, upon the evidence, to have been intended to be a bequest to the "Southern Baptist Theological Seminary," a Baptist theological institution in South Carolina, incorporated by an act of that state. In the course of the opinion the court said:

"There can be no doubt but that generally a testator, domiciled in this state, may, by his will duly executed and admitted to probate according to the laws of this state, make a valid bequest to a corporation chartered by another state and authorized by its charter to take and hold property.

"The Southern Baptist Theological Seminary is a corporation chartered by the state of South Carolina, and authorized by its charter to take and hold property; and the bequest in question was made to it by a testatrix domiciled in this state, by her will duly executed and admitted to probate according to the law of this state. Why, then, is not the said bequest valid?

"Certainly it is competent for the Legislature of this state to

prohibit altogether a bequest to a corporation of another state, and a fortiori to prohibit such a bequest in a particular or special case. There has been no such prohibition generally, or altogether. Has there been any particular or special prohibition which applies to the case under consideration? The appellees contend that there has been, while the appellants contend for the contrary; and this is the main subject of controversy in this case.

"The appellees contend that our law prohibits any bequest to a theological seminary, whether it be in or out of the state, while the appellants contend that our law does not prohibit a bequest to an incorporated theological seminary, authorized by its charter to take and hold property, whether such corporation be in or out of the state.

"The law on which the appellees rely is contained in Code 1873, c. 77, § 2, which declares that 'every gift, grant, devise or bequest which, since the second day of April in the year one thousand eight hundred and thirty-nine, has been, or at any time hereafter shall be, made for literary purposes, or for the education of white persons within this state (other than for the use of a theological seminary);' and similar words are then used in regard to the education of colored persons within this state, after which the law proceeds: 'Whether made in either case to a body corporate or unincorporated, or a natural person, shall be as valid as if made to or for the benefit of a certain natural person,' etc.

"Certainly this is the only law of this state which can have the effect, if any can, of invalidating the bequest in question. Can this law have that effect?

"It has always been settled as a general rule that a devise or bequest, indefinite as to its object or purposes, was on that account void. In England the subject of charities has long, if not always, formed an exception to that rule, either at common law or in virtue of St. 43 Eliz., commonly called the 'statute of charitable uses.' But ever since the decision of the cases of Baptist Association *v.* Hart's Ex'rs, 4 Wheat. (U. S.) 1, 4 L. Ed. 499, by the Supreme Court of the United States, and Gallego's Ex'rs *v.* Attorney General, 3 Leigh. 450, 24 Am. Dec. 650, by this court, it has been considered to be well settled that the English law of charities does not exist in this state, and that with the exception thereafter made by statute, which will be presently noticed, 'charitable bequests,' in the language of Judge Carr in the latter case, 'stand on the same footing with us as all others, and will alike be sustained by courts of equity.'"

The result of that inquiry was to hold that the bequest was valid.

It will be observed that in this case the bequest is to the trustees

of the Universalist General Convention of the remainder in certain real estate, which is to be by them sold and the money applied to mission work in the United States of America.

In Protestant Episcopal Education Society of Virginia *v.* Churchman, 80 Va. 718, a bequest to be used exclusively "for educating poor young men for the Episcopal ministry, upon the basis of evangelical principles as now established," was held not to be void for uncertainty, and Gallego's Ex'rs *v.* Attorney General, *supra,* was disapproved.

A like result was reached in Trustees *v.* Guthrie, 86 Va. 125, 10 S. E. 318, 6 L. R. A. 321; and in Fifield *v.* Van Wyck, 94 Va. 557, 27 S. E. 446, 64 Am. St. Rep. 745, the whole subject was reviewed. The doctrine of Gallego's Ex'rs *v.* Attorney General reaffirmed, and the dicta disapproving that decision which appear in the opinions in 80 Va. 718, and 86 Va. 125, 10 S. E. 318, 6 L. R. A. 321, above cited, were in terms disapproved, though the correctness of the decision in each of those cases was not questioned. While the provisions of the will in Fifield *v.* Van Wyck, *supra,* were held to be too indefinite to be enforced by a court of equity, there is no intimation or suggestion that a devise to a corporation for purposes within the scope of its powers and duty would be held void. That case merely maintains that the doctrine asserted in Gallego's Ex'rs *v.* Attorney General is the law of this state, except and until it is or shall be modified by the Legislature, and that our courts of chancery will not undertake to enforce indefinite charities.

In the still more recent case of Jordan's Adm'x *v.* Richmond Home for Ladies, decided at the March term, 1907, and reported in 1 Va. Appeals, 117, 56 S. E. 730, the whole subject has been elaborately reviewed, both as to the decisions and the statute law in force in this state, and the conclusion was reached that a bequest to a corporation for the general purposes of its incorporation was not uncertain in any respect.

We are of opinion that there is no error in the decree of the circuit court, which is affirmed.

Note.

In General.—Undoubtedly the declaration of a trust must be reasonably certain in its material terms, and this requisite of certainty includes the subject matter or property embraced within the trust, the beneficiaries or persons in whose behalf it is created, the nature and quantity of interest which they are to have, and the manner in which the trust is to be performed. Atwater *v.* Russell (Minn.), 51 N. W. 629, 632.

In most states the distinction between express private trusts and public or charitable trusts is this; that in the former there is not only a certain trustee who holds the legal estate, but there is a certain specified cestui que trust clearly identified, or made capable of iden-

tification, by the terms of the instrument erecting the trust. But it is an essential feature of the latter that the beneficiaries are uncertain, a class of persons described in some general language, often fluctuating, changing in their individual numbers, and partaking of a quasi public character. 2 Pom. Eq. Jur., § 1018.

The rule in Virginia as to charities is peculiar. In this state public or charitable trusts are not upheld to any greater extent than ordinary trusts are. Accordingly courts of chancery have no jurisdiction to uphold charities when the objects are indefinite and uncertain. Kain *v.* Gibboney, 101 U. S. 362, citing Baptist Association *v.* Heart, 4 Wheat. 1; Wheeler *v.* Smith, 9 How. 55; Gallego *v.* Attorney General, 3 Leigh 450.

And this is the rule in Maryland, Minnesota, Michigan and North Carolina. Erhardt *v.* Baltimore Monthly Meeting of Friends, 93 Md. 669, 49 Atl. 561; Lane *v.* Eaton, 69 Minn. 141, 71 N. W. 1031; 65 Am. St. Rep. 559, 38 L. R. A. 669; Wheelock *v.* American Tract Soc., 109 Mich. 141, 66 N. W. 955, 63 Am. St. Rep. 578; Kain *v.* Gibboney, 101 U. S. 362.

Uncertainty as to Objects and Beneficiaries.

In General.—Bequests for religious charities must be to some definite purpose, and to some body or association of persons having legal existence and with capacity to take. Morice *v.* Bishop of Durham, 9 Ves. 399; Bridges *v.* Pleasants, 4 Iredell's Equity 26.

Whenever a trust is established, and the subject of the trust is so certain that it may be known to what it attaches, and its object is so defined that it may be known who is the intended beneficiary, there is no question whether the trust be to a charitable use or not, but that it is valid, and may be enforced in equity. But, however fruitless the trust may be in other respects, if it be wanting in certainty as to its object, as a general rule, the trust must fail, or, what is the same thing, result to the benefit of those legally entitled to trust property. Miller *v.* Teachout, 24 O. St. 535.

Mr. Pomeroy, in speaking of the distinguishing features between charitable and private trusts, says that, in case of the former, "not only may the beneficiaries be uncertain, but that even when the gift is made to no certain trustee, so that the trust, if private, would wholly fail, a court of equity will carry the trust into effect either by appointing a trustee, or by acting itself in place of a trustee." 2 Pom. Eq. Jur., §§ 1025, 1026.

Georgia.—A charitable bequest to the treasurer of the American Bible Society and one to the treasurer of the Domestic Missionary Society, for the sole use, benefit and behoof of said societies are held to be definite, and the specific objects of the trusts pointed out. Beall *v.* Fox, 4 Ga. 428.

A will contained the following provision: "It is my will and desire that after my estate shall have been settled up, and all bequests paid out agreeably to the provisions of this my will, the balance of the money or cash remaining in the hands of my executors, shall be invested in an education fund, for the purpose of educating poor orphan children, citizens of the county of Columbia, and if the fund should not be absorbed, then the overplus to be applied to the education of the poor children of the county of Columbia." It was held, that the bequest was void, on account of the uncertainty as to the persons who were to take under it. The poor children of a county, or congregation, or school, are not susceptible of ascertainment. Beall *v.* Drane, 25 Ga. 431.

A bequest in the inferior court of a county of a sum of money to be placed in the hands of four men, who are to give bond and security, whose duty it shall be to loan out said amount and pay over

the interest annually to the inferior court, to pay for the education of poor children belonging to the county, and providing that no part of the principal shall be used for that purpose, is, according to the well-settled rules for the exercise of the inherent power of a court of chancery over charities, sufficiently definite and specific in its objects and sufficiently capable of execution to authorize and require our courts of chancery to give it effect. Newson *v.* Starke, 46 Ga. 88, overruling Beall *v.* Drane, 25 Ga. 431 under the provisions of the Ga. Code, conferring broader jurisdiction upon courts of equity.

Maryland.—It is well settled in Maryland, where the law as to charitable institutions is the same as ours, that uncertainty either as to the object or beneficiary will render the trust invalid. Church Extension *v.* Smith, 56 Md. 362; Trinity Methodist Episcopal Church *v.* Baker, 91 Md. 539, 46 Atl. 1020; Erhardt *v.* Baltimore Monthly Meeting of Friends, 93 Md. 669, 49 Atl. 561.

A devise and bequest to a religious society incorporated under the laws of Maryland, for the use of a school known as Park Avenue Friend Elementary and High School, or by whatsoever name the said school may hereafter be called, is not invalid because the objects and purposes for which the trusts were attempted to be created are too vague and indefinite to be enforced. Erhardt *v.* Baltimore Monthly Meeting of Friends, 93 Md. 669; 49 Atl. 561.

A bequest to "the trustees of the Strawbridge Methodist Episcopal church, for the benefit of the Ladies' Mite Society of said church, situate," was declared void because of the difficulty and uncertainty in determining for whose benefit the gift was intended. Likewise, a bequest for the benefit of "the necessitous of the Methodist Episcopal Church, erected from time to time within the limits of the United States, and its territory." Church Extension *v.* Smith, 56 Md. 362.

In Society *v.* Mitchell, 93 Md. 199, 48 Atl. 758, a will was sustained where a clause bequeathed the testatrix's residuary estate to the Woman's Missionary Society of the Methodist Episcopal Church, to be held in trust by that society for the education of six girls in India, etc.; the remainder to be used for the education of Christian girls, to be named after the testatrix.

A devise in trust to hold the same and collect the rents and income, after paying all taxes, etc., to divide the net income thereof equally between "the little sisters of the poor" the vestry of St. Mary's Church, the testator declaring that it was his desire that the money so received should be applied to the maintenance of the Parish school connected with the said St. Mary's Church, is not void for want of certainty and definiteness in the objects to be benefited. Hanson *v.* Little Sisters of the Poor, 79 Md. 434, 32 Atl. 1052, 32 L. R. A. 293, citing and approving Eutaw Place Baptist Church *v.* Shively, 67 Md. 494, 10 Atl. 244; Halsey *v.* Convention, 75 Md. 275, 23 Atl. 781, and distinguishing Church Extension *v.* Smith, 56 Md. 362.

In Halsey *v.* Convention, 75 Md. 280, 23 Atl. 781, where a testatrix devised a farm to her nephew for life, and upon his death 100 acres of the farm was devised to the Convention of the Protestant Episcopal Church of the Diocese of Maryland, a body corporate, to be held as a place for a church school for boys, to be under the control and supervision of the church; and where she also bequeathed a fund of $20,000, the income of which was to be paid to her sister for life, and then $5,000 of the fund should, at her sister's death, be paid to the Convention of the Protestant Episcopal Church as an endowment for Warfield College, it was held, that the object and purposes of the

trust are definite, and certain, and such as a court of chancery has full power to enforce.

A bequest as follows: "I give and bequeath to the Eutaw Place Baptist Church of Baltimore city a sum of $1,000, income, interest, or proceeds thereof, to be applied to the Sunday-School belonging to or attached to said church" is not void because of the uncertainty and want of a legal identification of the objects to be benefited by the bequest. Trustees of Eutaw Place Baptist Church *v.* Shively, 67 Md. 493, 10 Atl. 244.

A bequest of a sum of money to the vestry of a Baptist church to be invested, and the annual interest thereof to be devoted to the support of the rector or minister for the time being, is sufficiently definite and certain to be enforced. England *v.* Vestry, 53 Md. 467.

Michigan and Minnesota.—In Michigan and Minnesota we find the same strictness as to certainty and definiteness as in Virginia. First Soc. of M. E. Church *v.* Clark, 41 Mich. 730; Wheelock *v.* American Tract Soc., 109 Mich, 141, 66 N. W. 955; Little *v.* Willford, 31 Minn. 173.

A gift of money for the support of "charity patients" at a hospital, it not void for uncertainty as to a beneficiary. Atwater *v.* Russell (Minn.), 51 N. W. 629.

A devise of real estate describing the devisees only as "those members of the 'Society of the Most Precious Blood' who are under my control, and subject to my authority, at the time of my death," is void, because not pointing out with sufficient certainty the persons who are to take. Society of the Most Precious Blood *v.* Moll (Minn.), 53 N. W. 648.

North Carolina.—It was held, in White *v.* Attorney General, 4 Iredell's Equity 19, that a devise which directs real estate to "be sold and the proceeds laid out in building convenient places of worship free for the use of all Christians who acknowledged the divinity of Christ and the necessity of spiritual regeneration," is void for uncertainty. The court said: "It seems impossible for a court to hold, that a charity for religion is sufficiently specific, in which no part of the Christian world has any property, legal or equitable; which no one has a right to manage or preserve, and in which the court would, perhaps, be daily called on to regulate the uses of the buildings, which the various sects would endeavor to concentrate, each one in itself."

It was held, in Bridges *v.* Pleasants, 4 Iredell's Equity 26, that a will directing that certain money 'be applied to foreign missions and to the poor saints, this to be disposed of and applied as my executor may think the proper objects according to the scriptures; the greater part, however, to be applied to missionary purposes; say nine hundred dollars," is void for indefiniteness. The court said: "Poor saints if it could be known who they are at all, are not mentioned in the will, as of any county or country; but if any can take, all such persons throughout the world, are to share in it; which is preposterous."

Ohio.—A residuary clause in a will in these words: "The remainder of my estate I do hereby give and devise to the poor and needy, fatherless, etc., of (two townships named), 'to such poor as are not able to support themselves, to be divided as my executors may deem proper without any partiality,'" is valid and effectual for the purposes therein expressed. Urmey *v.* Wooden, 1 O. St. 161.

A residuary clause in a will in these words: "At the decease of my wife Esther I give and bequeath all my estate, real and personal, for the preaching of the gospel of the blessed Son of God, as taught

by the people known now as the Disciples of Christ. The preaching to be well and faithfully done in Lorain county in Birmingham, and at Berlin in Erie county, Ohio, and I nominate and appoint John Cyrenius, Silas Wood and Samuel Steadman executors of this item of my last will and testament, and I request them to do the business without remuneration,"—creates a valid trust which will be enforced in a court of equity. Sowers *v.* Cyrenius, 39 O. St. 29.

A testator makes a bequest in trust for the benefit of his parents during their lives, and proceeds: "It is my will and desire that upon the death of both of my said parents the trust shall expire, and my trustee shall distribute the funds as follows, to wit: As to the remaining three thousand dollars, the balance of said trust fund my trustee is directed to apply the same so that it may be used for the interests of religion, and for the advancement of the kingdom of Christ in the world, as follows, to wit: He shall pay to the treasurer of the American Tract Society the sum of one thousand dollars, to the treasurer of the American Bible Society the sum of five hundred dollars; to the treasurer of the society known as the American and Foreign Christian Union the sum of five hundred dollars; and to the treasurer of the American Home Missionary the sum of one thousand dollars." Held, the societies are the beneficiaries of the will, and the bequest is not void for uncertainty. American Tract Society *v.* Atwater, 30 O. St. 77.

A deed to certain persons, as "Trustees of the Presbyterian Congregation of Cincinnati, and their successors forever, for the use, benefit, and behoof of the aforesaid congregation forever," there being then but one such congregation, is not void for uncertainty as to the beneficiaries of the trust, although they were not then incorporated. Williams *v.* First Presbyterian Society, 1 O. St. 478.

A bequest, by a priest, of the income of certain lands to a fund to be used for educating for a priest a meritorious young man of Irish descent, to be selected from one of the different missions that the donor served as priest, the selection to be made by his successors at these missions by a competitive test or by rotation, is not void for uncertainty, where there are colleges for the purpose of educating priests. O'Neal *v.* Caulfield, 5 N. P. 149, 8 O. Dec. 248.

Pennsylvania.—A bequest of "three hundred dollars to be paid to the proper authorities of St. Marks Lutheran Church of Hanover, Pennsylvania, to be used in assisting to defray the expense of any young man of the church named in securing a thorough education for the purpose of becoming a minister of the gospel, if in the opinion of the pastor and church council the applicant is deserving of help, and possesses the requisite qualification to become in due time a well educated, energetic, and thoroughly competent minister of the gospel," is not void for uncertainty of the beneficiary. Young *v.* St. Marks Lutheran Church, 200 Pa. 332, 49 Atl. 887.

Virginia.—As has already been stated, in Virginia the English statute of charitable uses of 43 Elizabeth, ch. 4, does not exist, it having been repealed, and charitable bequests are not upheld to any greater extent than ordinary trusts are. Therefore uncertainty as to the beneficiaries even in case of a public or charitable trust will render it void. And this is the rule in Virginia at the present time, though there was an apparent departure from it in Protestant Episcopal Education Society *v.* Churchman, 80 Va. 718. See Gallego *v.* Attorney General, 3 Leigh 450; Brooke *v.* Shacklett, 13 Gratt. 301; Seaburn *v.* Seaburn, 15 Gratt. 423; Roy *v.* Rowzie, 25 Gratt. 599; Wain *v.* Gibboney, 101 U. S. 362.

Wisconsin.—The promotion of "temperance work," in a designated city, is a proper subject for a charitable trust, and is not void for uncertainty of purpose where the term obviously means work to prevent, so far as practicable, the use of intoxicating liquors. Harrington *v.* Pier, 105 Wis. 485.

England.—A bequest to "Roman Catholic bishops" and their successors is void, no such characters being known to the laws of Ireland; but where they are particularly named, though so described, the bequest is good for their joint lives, subject to the control of the court of chancery. Attorney General *v.* Power, 1 Ball & B. 145.

When the devise was "unto the Incorporated Society in Dublin for Promoting English Protestant Charter Schools in Ireland, and their successors;" held, that this was a sufficient declaration of the charitable purpose. Incorporated Society *v.* Richards, 1 Dr. & War. 258; 1 Con. & L. 58; 4 Ir. Eq. R. 177.

Bequest for the benefit of the poor dissenting ministers living in any country. It was in proof, that there are three distinct societies of dissenters, and that collections are made for the poor ministers of each. Held, the bequest not void for uncertainty, but should go to the poor ministers of each society. Waller *v.* Childs, Amb. 524.

A testator gave a legacy of £500 to the Society for the Abolition of Vivisection, and bequeathed the residue of his property to the Society of Carlsruhe for the Protection of Animals. The objects of the first-named society, as stated in the rules, were to procure by legislative enactment, the entire suppression of vivisection, to enforce by legal process the provisions of any statute prohibiting or regulating the practice of vivisection. The Carlsruhe society was formed with the objects principally of preventing the tormenting and illtreating of animals, and of protecting all useful animals, especially birds, and, whenever necessary, of providing them with food. The laws provided that if at any time the society should be dissolved, any property which it might possess should be handed over to some charitable institution by a last general meeting of the society. Held, that the legacies were charitable legacies; and that even if not charitable, they were not void for uncertainty or as creating perpetuities. Armstrong *v.* Reeves, 25 L. R., Ir. 325.

A bequest of a prize for an essay on the subject of emigration to the United States. Held, under the circumstances, void for uncertainty. Briggs *v.* Hartley, 19 L. J., Ch. 416; 14 Jur. 683.

Charitable Bequests for the Poor.—In most of the states a devise or bequest to a trustee or rector of a church for the benefit of the poor of a certain community, has been held to be an enforceable trust. Appeal of Goodrich, 57 Conn. 275, 18 Atl. 49; Cort *v.* Comstock, 51 Conn. 352; Beardsley *v.* Bridgeport, 53 Conn. 489, 3 Atl. 557; Bronson *v.* Strouse, 57 Conn. 147, 17 Atl. 699; Howard *v.* American Peace Soc., 49 Me. 288; Williams *v.* Pearson, 38 Ala. 299.

Mr. Perry sums up, as the result of the principles and authorities that a bequest to the poor generally, will not be carried into effect by the courts in this country. But further says that if a testator makes a general and indefinite bequest to the poor, and appoints no trustee, but plainly refers such appointment to the court, there would seem to be no impropriety in the court appointing a trustee according to the plain intent of the donor, leaving such trustee to find his power in the will of the donor. Quoted, with approval, in Hunt *v.* Fowler, 121 Ill. 269, 12 N. E. 331.

"A bequest in trust for the poor inhabitants of a particular place, parish, or town is a charitable trust for the poor not receiving parochial or municipal aid and relief as paupers; on the ground that

the charity is for the poor, and not for the rich, and, if it was applied to the maintenance of those supported by the parish, town, or county, it would relieve wealthy tax-payers from their taxes, and not materially aid the poor. Perry, Trusts, § 698." Hunt *v.* Fowler, 121 Ill. 269, 12 N. E. 331.

Connecticut.—A provision by will that the whole estate should "be used at discretion by the selectmen of B. for the special benefit of the worthy, deserving, poor, white, American, Protestant, democratic widows and orphans residing in B.," is valid. Beardsley *v.* Selectmen of Bridgeport, 53 Conn. 489, 55 Am. Rep. 152, 3 Atl. 557.

A provision in a will that certain property shall remain a fund in the hands of trustees until disposed of, as follows: "Said trustees, and their successors, shall appropriate the principal and interest thereof, as they shall deem proper, in such sum as they shall deem proper, to the aid of such indigent, needy, and meritorious widows and orphan children of the town of W. as may need temporary help to keep them from the disgrace of being chargeable to the town as paupers; leaving it to the said trustees, and their successors, to exercise a sound discretion as to who shall be made subjects of such aid," etc.,—is a valid gift to a charitable use, for a definite class. Camp *v.* Crocker, 54 Conn. 21, 5 Atl. 604.

Delaware.—A devise of lands in trust "to and for the support, maintenance and education of the poor white citizens of Kent county generally, who by timely assistance may be kept from being carried to the poorhouse, and becoming subjects thereof," the funds to be distributed by agents appointed by the Orphans' court, was held not void for uncertainty in description of objects. State *v.* Griffith, 2 Del. Ch. 392.

Illinois.—A will contained this residuary clause: "All the rest and residue of my estate, including that which may lapse for any cause, I direct to be invested or loaned upon the best terms possible, so as to produce the largest income, and said income to be distributed among the worthy poor of the city of La Salle, in such manner as a court of chancery may direct." Held, that this created a valid charitable trust, under the control of chancery, and was not void for uncertainty in the beneficiaries. Hunt *v.* Fowler, 121 Ill. 269, 12 N. E. 331.

In Heuser *v.* Harris, 42 Ill. 425, the bequest of money was "to the poor of Madison county," the interest only to be used, with no appointment of a trustee. As the county court of Madison county was charged by law with the support of the paupers in the county, it was held in that particular case that the poor of the county were its paupers, and that the fund should be held by the county court to be applied for the latter's support. It is not to be the inference from that case that a charitable bequest to the poor necessarily means to paupers, and that the trust is only to be executed by somebody charged by law with the support of paupers.

Louisiana.—Where a legacy is given to the incorporated churches of a particular Christian denomination in the city of New Orleans "to the end that the poor of said respective churches may be cared for," it was held, that the uncertainty in such a designation of the beneficiaries of the bequest is characteristic of donations to pious uses, and is no obstacle to their validity. Succession of Auch, 39 La. Ann. 1043, 3 So. 227.

Virginia.—Since in Virginia the system of distinctively charitable trusts is not recognized, and the court applies only the rules applicable to express private trusts, it is difficult to see how a trust for the relief of the poor of a certain county or parish could be upheld.

Such indefiniteness and uncertainty as to the beneficiaries in the case of an express private trust would certainly vitiate it, and the same rule is applied in Virginia in case of public or charitable trusts, as in ordinary trusts. See Kain *v.* Gibboney, 101 U. S. 366.

Courts of equity in this state exercise no prerogative powers, but, as contradistinguished therefrom, only judicial powers, therefore it could not by the act of the individual, be invested with a power not judicial, namely, that of selecting or designating the poor to be the recipients of the testator's bounty, and since it could not be invested with such power, it could not appoint and invest a trustee with such power.

Testatrix devised her property to her executors in trust to pay the same to certain charities, "in such sums and portions as, in their discretion, they shall think proper," the amount to be paid or sums to be distributed to each being left to the discretion of the executors, and, if they thought best, to appropriate a portion of the money, and pay the same, in such sums and at such times as they may determine, to such "worthy poor girls" as they may select. Held, that the will is inadequate to create a valid trust, under How. Ann. St. 1883, § 5573, providing that a trust for the benefit of any person may be created only when fully expressed and clearly defined upon the face of the instrument creating it. Wheelock *v.* American Tract Soc., 109 Mich. 141, 66 N. W. 955.

Where the Trustee Is Clothed with Discretion.—Although there is considerable conflict in the different states as to the validity of a trust, the object of which is uncertain, where there is a trustee with discretion as to the application of the fund, the rule in Virginia and North Carolina seems to be that it is nevertheless void, although through the instrumentality of the trustee it can be made certain. Miller *v.* Atkinson, 63 N. C. 537; Hester *v.* Hester, 2 Ired. Eq. 330.

Thus, a bequest for a public purpose, namely, one given to trustees "for such purposes as they might consider to be most beneficial to the town and trade of Alexandria," is void because the objects of the charity are indefinite and uncertain. Wheeler *v.* Smith, 9 How. 55, following Gallego *v.* Attorney General, 3 Leigh 450.

A testator directed his trustees to apply the residue to and for such benevolent, charitable and religious purposes as they in their discretion should think most advantageous and beneficial. Held, that such bequest was void for uncertainty. Williams *v.* Williams, 5 L. J., ch. 84, S. P., Williams *v.* Kershaw, 5 Cl. & F. 111.

A testator directed that his executors should apply to any charitable or benevolent purpose they might agree upon, and at any time, the residue of his personal property which by law might be applied to charitable purposes. Held, that the direction to the executors was indefinite and inoperative; that the certainty or uncertainty was to be ascertained at the date of the testator's death; that the gift failed. Jarman, In re Leavers *v.* Clayton, 47 L. J., Ch. 675; 8 Ch. D. 584; 39 L. T. 89; 26 W. R. 907.

Bequest in trust for such "benevolent" purposes as the trustees in their integrity and discretion may unanimously agree on, not to be supported as a charitable legacy, the word "benevolent" not to be restricted to the sense of "charitable," and therefore void for uncertainty. James *v.* Allen, 3 Mer. 17; 17 R. R. 4.

A testator bequeathed a sum of money, the interest to be paid annually to the mayor of G., "to be expended by him in acts of hospitality or charity at such times and in such manner as he might think best." Held, that the gift was not confined to charitable purposes

only, and was therefore void for uncertainty. Jarman's Estate, In re. Leavers *v.* Clayton (8 Ch. D. 584) followed in Hewitt's Estate, In re Gateshead Corporation *v.* Hudspeth, 53 L. J., Ch. 132; 49 L. T. 587.

It was held, in Morice *v.* Bishop of Durham, 9 Ves. 399; S. C., 10 Ves. 252, that a gift to the bishop, "to be disposed of to such objects of benevolence and liberality as he should most approve of," was void for its vagueness and generality; inasmuch as no person or persons in particular could claim the benefit of the gift or enforce the bishop to bestow charity upon any person, while it was yet clear that the bishop could not keep it to himself.

But the contrary rule prevails in most jurisdictions. Treat's Appeal, 30 Conn. 113; State *v.* Griffith, 2 Del. Ch. 392; Going *v.* Emery, 16 Pick. 107; Miller *v.* Teachout, 24 Ohio 525; Fink *v.* Fink, 12 La. Ann. 301; Ex Parte Lindley, 32 Ind. 367.

In the case of a charitable bequest it is immaterial how vague, indefinite and uncertain the objects of the testator's bounty may be, provided there is a discretionary power vested in some one over its application to those objects. Hunt *v.* Fowler, 121 Ill. 269, 12 N. E. 331, citing Domestic & F. M. Society's Appeal, 30 Pa. St. 425, disapproving White *v.* Fisk, 22 Conn. 31.

The power in the trustee to act at its discretion need not be expressly given, if it can be implied from the nature of the trust. Hesketh *v.* Murphy, 36 N. J. Eq. (9 Stew.) 304; Pickering *v.* Shotwell, 10 Pa. St. 23.

A testator provided in his will that the residue of his estate, which consisted of personal property, after paying legacies, should be retained by his executor and invested by him during the life of his wife for her use, and that at her death it should be appropriated by the executor to the advancement of the Christian religion, and be applied in such manner as, in his judgment, would best promote the object named. The executor accepted the trust; and during his life and that of the widow, the heir brought suit to annul the will for uncertainty as to the object of the trust. Held, that the testator had conferred ample power upon the executor to relieve the bequest of all objections arising from its indefinite character, and that so long as no obstacle exists to the exercise of the power at the proper time, the courts of this state will not, in advance of that time, interpose, on the application of the heir, to prevent its exercise. Miller *v.* Teachout, 24 O. St. 525.

Uncertainty as to Subject Matter.—A trust is not open to the objection of uncertainty as to its subject matter, where the instrument directs that the rents and profits derived from a certain source shall be applied to the payment of taxes and the expenses of conducting the trust. Atwater *v.* Russell (Minn.), 51 N. W. 629.

Uncertainty as to Amount.—Uncertainty as to the amount intended to be given, may render the trust void. See Beall *v.* Fox, 4 Ga. 427.

Where a testator bequeathes the sum of ——— dollars to the administrator of M., for educating the poor, it was held, void for uncertainty as to amount, and he took nothing. Hartshorne *v.* Nicholson, 26 Beav. 58.

Where six thousand pounds were given for a hospital, to be invested and held until it amounted to ——— pounds, for supporting ——— boys, it was held, to have failed. Ewen *v.* Banneman, 2 Dow. & C. 74.

Generality.—It never has been considered as an objection to a charitable use, because it was general, and in some respects indefinite, unless there was an uncertainty as to the amount intended to be given, or the general object of the use was of so uncertain and in-

definite a character, that it could not be executed. Beall *v.* Fox, 4 Ga. 427.

Unincorporated Societies.—A further point is suggested by this case. Could this devise have been upheld had it appeared, as contended by the complainant, that this was an unincorporated religious society.

It has been held, in some states, that unincorporated societies are not capable of taking, and that devises to them are void. Grimes *v.* Harmon, 35 Ind. 246; State *v.* Warren, 28 Md. 338; Barker *v.* Wood, 9 Mass. 419; Holland *v.* Peck, 2 Ired. Eq. 255; White *v.* Hall, 2 Coldw. (Tenn.) 77; Heiss *v.* Murphy, 40 Wis. 276; Ruth *v.* Oberbruner, 40 Wis. 238; Rhodes *v.* Rhodes, 88 Tenn. 637, 13 S. W. 590; Daniel *v.* Fain, 5 Lea 319; Reeves *v.* Reeves, 5 Lea 644; Church Extension of M. E. Church *v.* Smith, 56 Md. 362; Rizer *v.* Perry, 58 Md. 113; First Presbyterian Society *v.* Bowen, 21 Hun 389; McKeon *v.* Kearney, 57 How. Pr. 349; Betts *v.* Betts, 4 Abb. N. C. 403; Leonard *v.* Davenport, 58 How. Pr. 384; Downing *v.* Marshall, 23 N. Y. 268; Methodist Church *v.* Clark, 41 Mich. 730.

The testator devised a certain part of his property (consisting mostly of real estate) to certain named trustees in trust to be disposed of for the use of the branch of the Salvation Army located in St. Paul, Minn., said proceeds "to be permanently invested in the purchase of a lot, and the erection thereon of a place of worship where said Salvation Army may hold meetings," and, if said branch "should become legally organized so it may take and hold the title to property," the trustees were directed to transfer to it all the property, or the proceeds thereof. The Salvation Army is an unincorporated religious society having its headquarters in England, and, while its officers have military titles, their duties correspond to those of the bishops, elders, and pastors of other churches. Said St. Paul branch was then in existence. Held, under the provisions of ch. 43, Gen. St. 1894, the beneficiary of the trust must be certain, or capable of being rendered certain, and no such unincorporated voluntary association, or branch thereof, whose membership is fluctuating and uncertain, can be such beneficiary. Lane *v.* Eaton, 71 N. W. 1031, 69 Minn. 141, 65 Am. St. Rep. 559, 38 L. R. A. 669.

The court in Kain *v.* Gibboney, 101 U. S. 366, reviewed at length the law on this subject, and held that such society could not take in Virginia.

The case of Charles *v.* Hunnicutt, 5 Call 311, seems to hold that a devise to an unincorporated association for charitable purposes will be upheld.

In Virginia, a bequest to "Richard *v.* Wheelan, Bishop of Wheelan or to his successor in said dignity," for the benefit of a religious community, of which the testatrix contemplated she might die a member, is invalid for uncertainty as to the beneficiary. It is the association and not the individual members who composed it, when the testatrix died, which is declared to be the beneficiary. Its members will be constantly changing, and it must always be uncertain who may be its members at any given time. Kain *v.* Gibboney, 101 U. S. 362, citing Baptist Association *v.* Hart, 4 Wheat 1.

So it is doubtful whether unincorporated associations can take in Virginia. We have Philadelphia Baptist Assoc. *v.* Hart, 4 Wheat. 1, followed in Kain *v.* Gibboney, 101 U. S. 366, announcing one rule and Charles *v.* Hunnicut, 5 Call 311, deciding the contrary.

But the contrary is held in many states. Dexter *v.* Gardner, 7

Allen 243; Bartlett *v.* Nye. 4 Metc. 378; Tucker *v.* Seaman's Aid Society, 7 Metc. 188; Burbank *v.* Witney, 24 Pick. 146; Parker *v.* Cowell, 16 N. H. 149; Wright *v.* M. E. Church, Hoffm. Ch. 202; Gibson *v.* McCall, 1 Rich. L. (S. C.) 174; Hadden *v.* Methodist Society (N. J.) 32 L. R. A. 625, and note; Williams *v.* First Presbyterian Society, 1 O. St. 478; Burr *v.* Smith, 7 Vt. 241, 29 Am. Dec. 154; Pickering *v.* Shotwell, 10 Pa. St. 23; Conklin *v.* Davis, 63 Conn. 377, 28 Atl. 537; Tappan *v.* Deblois, 45 Me. 130.

In South Carolina a church, though it is an unincorporated association, is capable of taking. Dye *v.* Beaver Creek Church, 48 S. C. 444, 59 Am. St. Rep. 724.

DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

GARRETT *v.* FINCH et ux.

June 13, 1907.

[57 S. E. 604.]

1. Equity—Bill—Multifariousness.—Where a bill for the rescission of a lease alleged in the ordinary way that complainant had been induced to enter into the contract by the false representations, warranties, and statements of the lessors and their agent, and that he would not have made the contract but for his faith in the truth of these representations, and it is not perceived that the course pursued could result in injury to any one of the parties to the litigation, the bill will not be dismissed as multifarious.

2. Cancellation of Instruments—Jurisdiction—Court of Equity.—A suit in equity is the proper remedy for relief where the prime object is to have rescinded a lease alleged to have been procured by fraud.

3. Same—Bill—Allegations of Fact.—A bill to have a lease set aside for fraud alleged that prior to the making of the lease, and as an inducement to the plaintiff to enter into it, he was assured by the lessors and their agent that a certain pier then in progress of construction would be completed and maintained; that the steamboats of certain domestic and foreign lines would have their wharfage regularly at this pier; that Thirty-Second street was to be opened, and a number of warehouses erected on or adjacent to the pier; that because of these things this pier would become the leading one in the city and Thirty-Second street the main thoroughfare; that the lot leased by the plaintiff is about 300 yards from the river and so situated as to be peculiarly benefited by the completion and maintenance of the pier and the extension of Thirty-Second street; that it was well known to the lessors that, unless these representations and assur-